

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2853 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

FATEHMOHMOD ILIYASBHAI MIYANA

Versus

COMMISSIONER OF POLICE RAJKOT

Appearance:

MR VIJAY H PATEL for Petitioner
Mr S J Dave, APP for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 07/09/98

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the Act of 1985') by the order dated 17.2.1998 passed by the Police Commissioner, Rajkot City. It is alleged that the petitioner is a bootlegger and some cases under the provisions of Bombay Prohibition Act, 1949 have been registered against him. It is now well settled that

unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491. In the instant case there is nothing to indicate that the petitioner has indulged in any criminal activities as a bootlegger which has affected or likely to affect maintenance of public order. Thus, in my view, the impugned order of detention is ex-facie illegal and the same cannot be sustained.

2. In view of the aforesaid, this Special Civil Application is allowed. The impugned order dated 17.2.1998 passed by the Police Commissioner, Rajkot City is quashed and set aside. The detenu shall be released forthwith if not required in any other cases. Rule made absolute accordingly.

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msp.